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Filed : February 26, 2004

REMARKS

Claims 1-40 remain pending and are presented for further examination. No amendments to the claims are made in this response.

Discussion of Rejections Under 35 U.S.C. § 103(a)

Claims 1-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burns (U.S. Patent No. 6,526,173, hereinafter "Burns") in view of Talluri et al. (U.S. Patent No. 6,026,183, hereinafter "Talluri"). Applicant respectfully submits that the pending claims are allowable over the cited references for at least the following reasons.

Burns and Talluri Fail to Teach or Suggest All Claim Limitations of Claims 1 and 20

Claims 1 and 20 each recite the feature "identify[ing] a plurality of points having at least one related characteristic in at least one of the first and second frames based, at least in part, on numerical differences between the first and second frames." Applicant respectfully submits that neither Burns nor Talluri, alone or in combination, disclose this claimed feature.

In the Office Action, the Examiner concedes that "Burns differs from the claims in that it does not specify ... identifying a plurality of points having at least one related characteristic based, at least in part, on numerical differences between the first and second frames." Office Action at 3. Instead, the Examiner relies on Talluri to cure this deficiency, stating that Talluri "teaches an object identification method in which a moving object is identified basd [sic] on numerical differences between the first and second frames ... as taught by Talluri, within the method of Burns for identifying a moving object."

However, Talluri does not disclose "identifying a plurality of points having at least one related characteristic in at least one of the first and second frames based, at least in part, on numerical differences between the first and second frames." Instead, Talluri describes a system which provides a "content-based video compression with difference region encoding instead of strictly moving object encoding ..." (col. 3, lines 55 to 63). In that regard, Talluri detects regions of change that only "approximately describe the moving objects" (col. 6, lines 2 to 3), and which include both moving objects and background (col. 8, lines 5-6). Thus, to the extent, if any, that

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Talluri describes identifying a plurality of points, those points have different, unrelated characteristics.

Accordingly, Applicant respectfully submits that neither Burns nor Talluri, either alone or in combination, teaches or suggests at least “identifying a plurality of points having at least one related characteristic in at least one of the first and second frames based, at least in part, on numerical differences between the first and second frames” as recited in Claim 1 and similarly in Claim 20. The remaining references made of record do not cure this deficiency.

The Examiner Has Provided No Proper Reason to Combine Burns And Talluri

In addition to the reasons discussed above, Applicant respectfully submits that Burns and Talluri also fail to render Claims 1 and 20 obvious because there would have been no reason, teaching, or suggestion to combine the Burns and Talluri to achieve the claimed invention. In combining Burns and Talluri, the Examiner states that “Talluri teaches an object identification method ... within the method of Burns for identifying a moving object.” However, as the Supreme Court recently explained “a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1396 (2007).

Moreover, “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)). “To facilitate review, this analysis should be made explicit.” *Id.* Furthermore, “[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U.S. at 36 (warning against a ‘temptation to read into the prior art the teachings of the invention in issue’ and instructing courts to ‘guard against slipping into the use of hindsight’ (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).” *Id.* at ___, 82 U.S.Q.P.2d at 1397. Here, the Examiner has provided no reason to combine the cited references *other* than the reasons provided by the Applicant, e.g., the language of the claims themselves. Applicant submits that such use of the Applicant’s teachings to combine the references is the very essence of improper hindsight.

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The Proposed Combination Would Change the Principle of Operation of Burns

Applicant further submits that the combination of Burns and Talluri is improper because the proposed combination would change the principle of operation of the Burns reference. "If the proposed modification would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." M.P.E.P. § 2143.01 (citing *In re Ratti*, 270 F.2d 810 (CCPA 1959)).

Talluri "detect[s] moving objects in the frame by finding regions of change from reconstructed F_{N-1} to F_N . Reconstructed F_{N-1} is the approximation to $F_{N-1}...$ " Talluri at col. 5, line 65 through col. 6, line 1. Thus, Talluri operates on an already "reconstructed" frame to detect moving objects. Burns, in contrast, does not operate on already reconstructed frames, but instead "key points on the object are identified in the starting frame and the corresponding feature points are also identified in the ending frame." Burns at col. 3, lines 31-34. Modifying Burns with the Talluri would therefore require the addition of some functionality which allows for the use of "reconstructed" frames. Such an addition would change principle of operation of Burns by requiring that "reconstructed" frames be generated prior to any object identification. Because the proposed modification would change principle of operation of Burns, there is no suggestion, motivation, or reason that a skilled artisan would modify Burns based on Talluri.

Discussion of Dependent Claims

Claims 2-19 and 40 depend upon base Claim 1, and Claims 21-39 depend upon base Claim 20. Claims 2-19, 21-39 and 40 further define additional technical features of the present invention. In view of the patentability of base Claims 1 and 20, and in further view of the additional technical features as recited in Claims 2-19, 21-39 and 40, Applicant respectfully submits that dependent Claims 2-19, 21-39 and 40 are patentable over the references.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations

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or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicant has endeavored to address all of the Examiner's concerns as expressed in the Office Action. Accordingly, arguments in support of patentability of the pending claim set are presented above. Applicant submits that the claim limitations above represent only illustrative distinctions. Hence, there may be other patentable features that distinguish the claimed inventions from the prior art.


In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections and, particularly, that all claims be allowed. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully invited to call the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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